

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 423 of 2021

IN THE MATTER OF:

Jaipur Trade Expocentre Pvt. Ltd.

...Appellant

Versus

Metro Jet Airways Training Pvt. Ltd.

...Respondent

Present:

For Appellant: Ms. Sanjana Saddy, Mr. Sanyat Lodha and Ms. Harshita Singhal and Hima Bhardwaj, Advocates

For Respondents: Mr. Vikrant Arora, Advocate.

ORDER
(Virtual Mode)

09.03.2022: We have heard the Learned Counsel for the parties. By Judgement dated 07th March, 2022 of this Tribunal comprising two Members Bench has referred following questions for consideration before the 'Larger Bench':

"i. Whether the Judgment of this Tribunal in Company Appeal (AT) (Ins.) No. 331 of 2019 in the matter of 'Mr. M. Ravindranath Reddy Vs. Mr. G. Kishan & Ors.' Lays down the correct law.

ii. Whether claim of the Licensor for payment of License Fee for use and occupation of Immovable Premises for commercial purposes is a claim of 'Operational Debt' within the meaning of Section 5(21) of the Code."

2. Learned Counsel for the Appellant submits that the Judgment which was delivered in “Mr. M. Ravindranath Reddy Vs. Mr. G. Kishan & Ors.” Case is distinguishable. It is further submitted that the facts of the Appellant’s case is that there was warm shell building and services, are clearly distinguishable from the facts of the above case and it is ‘operational debt’ within the meaning of Section 5(21) of the Insolvency and Bankruptcy Code, 2016.

3. Learned Counsel for the Respondent submits that there are other Judgments taking the same view which has been taken in “Mr. M. Ravindranath Reddy Vs. Mr. G. Kishan & Ors.” case. The two Members Bench by Judgment dated 07th March, 2022 has expressed doubts about the correctness of the law laid down by three Members Bench in “Mr.M. Ravindranath Reddy Vs. Mr. G. Kishan & Ors.” case.

4. We have also our doubts with regard to the correctness of the law in Judgment of “Mr. M. Ravindranath Reddy Vs. Mr. G. Kishan & Ors.” as noted in the aforesaid referring Judgment. The Judgement of Hon’ble Supreme Court in “Mobilox Innovations (P) Ltd. Vs. Kirusa Software (P) Ltd.” where report of the ‘Bankruptcy Law Reforms Committee’ have been quoted with approval, has not been noticed.

5. We are thus of the view that two aforesaid quoted questions framed in Referring Judgment dated 07th March, 2022 be placed for consideration before the ‘Larger Bench’. Let the matter be placed before the Hon’ble Chairperson on the administrative side to constitute a ‘Larger Bench’ for considering the questions as framed in the Judgment dated 07th March, 2022.

6. Learned Counsel for the parties are permitted to file written-submissions within two weeks along with relevant Judgements they want to refer or rely on.

**[Justice Ashok Bhushan]
Chairperson**

**[Dr. Ashok Kumar Mishra]
Member (Technical)**

**[Dr. Alok Srivastava]
Member (Technical)**

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